

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2019.03
COMPLAINT INVESTIGATOR:	Susan Reimlinger
DATE OF COMPLAINT:	March 26, 2003
DATE OF REPORT:	May 1, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	October 8, 2003

COMPLAINT ISSUES:

Whether the Rochester Community School Corporation and the Joint Educational Services in Special Education violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to:

- a. provide occupational therapy (OT) in accordance with the frequency stated in the IEP; and
- b. provide a one-to-one instructional assistant (IA) when the student's regular IA was unavailable.

511 IAC 7-27-6(a)(5) by failing to include a statement in the student's IEP of the length and frequency of the physical therapy consultation.

511 IAC 7-21-2(a) and (b) by failing to utilize appropriately licensed personnel to provide instruction and curriculum modifications for the student.

511 IAC 7-27-9(b) by failing to allow the student to have lunch with other students due to staff shortages.

511 IAC 7-18-2(a) by failing to provide a free appropriate public education (FAPE), specifically, failing to provide adequate privacy to the student when dealing with the student's personal hygiene needs.

511 IAC 7-21-6(b) by failing to provide instructional materials and supplies comparable to those provided to nondisabled students.

FINDINGS OF FACT:

1. The Student is 13 years old, attends the local middle school (the School), and is eligible for special education and related services as a student with multiple disabilities and a communication disorder.
2. The Student's October 2, 2002, IEP indicates that occupational therapy (OT) is to be provided "5 times a month (as needed)." Neither length nor location for this service is indicated. Documentation submitted indicates that in November 2002, unannounced to the Director, the hospital-contracted occupational therapist left the position, and upon investigation of this, the hospital was no longer willing to be contracted with for the service. While trying to secure a permanent replacement, the School's OT set up "regular visits twice a month." Subsequent to this complaint, the School's OT has agreed to provide the service as indicated in the IEP beginning on April 21, 2003. However, the School did not provide documentation of what service has been actually delivered to date.

3. The Complainant alleges that when the Student's one-to-one instructional assistant is absent there is no substitute. Documentation submitted indicates that there is a plan for, in sequence as needed, using three other IA's to substitute, and then if none of those three are available, bringing in a "float aide" from a list of eight possible persons. Documentation also indicates that only on February 14, 2003 was there no IA available for the Student. However, no documentation was submitted to indicate the designated IA's overall attendance record and what substitution actually occurred each time the IA was absent.
4. The Complainant alleges that the IEP does not indicate length and frequency for physical therapy (PT). The purpose of the October 2, 2002, CCC meeting was to "discuss results of OT and PT evaluations and to determine services needed." The October 2 IEP submitted indicates "consultation" for PT, with no length, frequency, or location.
5. The Student's least restrictive environment is full-time seventh grade general education, with the Student's current academic performance being at approximately the twelve-month level. The Student is assigned a one-on-one instructional assistant (IA). Documentation indicates that the teacher of record (TOR) is appropriately licensed. The TOR and the teacher of service (TOS) indicate that the "IA adapts lesson plans to meet the needs of the student where a 'yes or no' answer will be given to check for comprehension." A daily schedule outlines 15 time periods and the names of eight general education teachers next to the courses they teach. Only one time period indicates "teacher of service - meeting", with the TOS's name. Next to each time period are handwritten notes indicating what the IA and Student did at that point in the day, but neither the schedule form nor the written notes indicate what instruction or modification is provided by any teacher, particularly the TOS or the TOR.
6. The current IEP indicates that the Student has medical needs and has the related service of "nursing services - water, medicine, lunch (lunch provided in cafe)," the location of which is "health room/cafeteria." Documentation indicates that due to a severe flu outbreak, the nurse was required to remain in her office all day on two occasions and therefore, the Student had lunch with the nurse in the health room.
7. Documentation indicates that the small room used for the Student's personal hygiene needs also had a desk for another student to receive one-to-one instruction. Subsequent to this complaint, the desk has been removed and no other student uses the room.
8. The Director acknowledges that when there were not enough materials for all students, this Student was one who did not receive the materials. However, subsequent to this complaint the Principal has corrected the situation.

CONCLUSIONS:

1. Finding of Fact #2 indicates that OT has not been delivered according to the frequency listed in the IEP. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #3 indicates that while there is a plan for IA substitution, the School failed to provide an IA on February 14, 2003. Therefore, a violation of 511 IAC 7-27-7(a) is found.
3. Findings of Fact #2 and #4 indicate that the IEP does not list length, frequency, and location of PT consultation, and not the length and location for OT. Therefore, a violation of 511 IAC 7-27-6(a)(5) is found.

4. Finding of Fact #5 indicates that while the School did provide documentation of the TOR's license, it failed to provide documentation regarding daily instruction or curriculum modification being conducted by the TOR, TOS, and/or general education teachers. Therefore, a violation of 511 IAC 7-21-2(a) and (b) is found.
5. Finding of Fact #6 indicates that while one of the locations for the provision of the related service of nursing service is to be the cafeteria, and for the occasions in question the location for lunch was the health room instead, the circumstances for this change were unusual, not due to intentional non-implementation of the IEP, and the related service of nursing service was still being delivered. Therefore, no violation of 511 IAC 7-27-9(b) is found.
6. Finding of Fact #7 indicates that there had been multiple purposes for the room in which the Student's personal hygiene is addressed. Therefore, a violation of 511 IAC 7-18-2(a) is found.
7. Finding of Fact #8 indicates that the Student was not provided instructional materials and supplies. Therefore, a violation of 511 IAC 7-21-6(b) is found.

The Department of Education, Division of Exceptional Learners requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Joint Educational Services in Special Education shall:

1. Convene a case conference to revise the Student's IEP to clearly indicate length, frequency, and location for OT and PT. Consideration of compensatory services must be given and clearly documented. The school must ensure that the IEP is an "agreed-upon IEP" with consent from the parent/guardian. A copy of the CCC Report / IEP shall be sent to the Division no later than May 16, 2003. A copy of the written record of any compensatory services delivered must be submitted to the Division no later than June 27, 2003.
2. Retrain all special education and administrative staff about the requirements in 511 IAC 7-21-2(a) regarding paraprofessionals and assistants working under the direction and supervision of licensed teachers or related services personnel. Provide an assurance statement from the TOR and TOS regarding instruction and modifications they have conducted for the remainder of this school year. A description of the method of retraining, a list of the staff who were retrained, and the assurance statement shall be sent to the Division no later than June 6, 2003.
3. Revise the daily schedule form, referred to in Finding of Fact #5, to allow for clear, brief indication of what instruction and/or modification(s) the TOR, the TOS, and/or the general education teachers give the IA, and for clear indication that the Student has been provided instructional materials and supplies. A copy of the revised daily schedule form must be put into use and submitted to the Division no later than May 16, 2003. Copies of completed schedules for 5 school days must be submitted to the Division no later than June 6, 2003.
4. Provide an assurance statement about how the personal hygiene needs are being handled to the Division no later than May 9, 2003.